

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Frederick James Fillingham, #17031-053,)
Plaintiff,) C.A. No. 8:15-1623-HMH-JDA
vs.)
U.S. Department of Justice (DOJ),)
United States Attorneys (USA),)
Office of Information Policy (OIP),)
United States Parole Commission (USPC),)
Defendants.)

OPINION & ORDER

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Jacquelyn D. Austin, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02 of the District of South Carolina.¹ Frederick James Fillingham (“Fillingham”), a pro se federal prisoner, filed a complaint requesting that the court order the Defendants to expedite their responses to Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq., requests by Fillingham. In her Report, Magistrate Judge Austin recommends dismissing the complaint without prejudice because Fillingham has failed to prosecute this case and has failed to comply with three separate court orders directing him to bring this action into proper form.

¹ The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

Fillingham filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, and taken in a light most favorable to the plaintiff, the court gleaned one specific objection to the magistrate judge's Report and Recommendation. Fillingham objects that the Report and Recommendation fails to specifically explain why his action was not considered in proper form. However, the magistrate judge issued three previous proper form orders informing Fillingham that in order to proceed with his case, he needed to either pay the filing fee or submit Form AO240 and financial certificate to allow the court to determine whether he was entitled to proceed without payment of fees. In Re: Procedures in Civil Actions Filed by Prisoner Pro Se Litigants, No. 3:07-mc-5014-JFA (D.S.C. Sept. 18, 2007). Thus, Fillingham has been repeatedly advised why his action is not in proper form and he has failed to comply with the court's orders. Therefore, his objection is without merit. Based on the foregoing, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge Austin's Report and Recommendation and incorporates it herein.

Therefore, it is

ORDERED that the complaint, docket number 1, is dismissed without prejudice. It is further

ORDERED that Fillingham's motion for leave to proceed in forma pauperis, docket number 2, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
March 28, 2016

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.